

Chapter DHS 94

PATIENT RIGHTS AND RESOLUTION OF PATIENT GRIEVANCES

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Note: Corrections in chapter HFS 94 made under s. 13.93 (2m) (b) 1., 6. and 7., Stats., Register, June, 1996, No. 486. **Chapter HFS 94 was renumbered to chapter DHS 94 under s. 13.92 (4) (b) 1., Stats., and corrections made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.**

Subchapter I — General Provisions

DHS 94.01 Authority, purpose and applicability.

(1) **AUTHORITY AND PURPOSE.** This chapter is promulgated under the authority of s. 51.61 (5) (b) and (9), Stats., to implement s. 51.61, Stats., concerning the rights of patients receiving treatment for mental illness, a developmental disability, alcohol abuse or dependency or other drug abuse or dependency.

(2) **TO WHOM THE RULES APPLY.** (a) Except as provided in par. (b), this chapter applies to the department, to county departments established under s. 46.23, 51.42 or 51.437, Stats., and to all treatment facilities and other service providers, whether or not under contract to a county department, including the state-operated mental health institutes and centers for the developmentally disabled, habilitation or rehabilitation programs, programs certified under ch. DHS 61 and facilities licensed under ch. DHS 124 which also provide treatment for alcoholic, drug dependent, mentally ill or developmentally disabled persons. This chapter also applies to correctional institutions in which inmates receive treatment for mental disorders, but only in relation to patient rights specified in s. 51.61 (1) (a), (d), (f), (g), (h), (j) and (k), Stats. This chapter does not apply to a hospital emergency room.

Note: The mental health treatment of inmates of correctional institutions is governed by ch. DOC 314. The application of ch. DHS 94 to correctional institutions is consistent with ss. DOC 314.02 (9) and 314.04 (1) (c).

(b) Subchapter III does not apply to the grievance procedures of the state mental health institutes, the state centers for persons with developmental disabilities or units housing patients committed under ch. 980, Stats., nor does it apply to individual private practitioners who deliver services through offices that are not part of a program.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87; correction in (2) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1995, No. 474; am. (1), renum. (2) to be (2) (a) and am., cr. (2) (b), Register, June, 1996, No. 486, eff. 7-1-96; **corrections in (2) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.**

DHS 94.02 Definitions. In this chapter:

(1) “Body cavity search” means a strip search in which body cavities are inspected by the entry of an object or fingers into body cavities.

(2) “Body search” means a personal search, a strip search or a body cavity search of a patient.

(3) “Client,” as used in subch. III, means a patient.

(4) “Client rights specialist” means a person designated by a program or a coalition of programs to facilitate informal resolution of concerns where requested and to conduct program level reviews of grievances and make proposed factual findings, determinations of merit and recommendations for resolution which are provided to the program manager and the client.

(5) “Coalition of programs,” as used in subch. III, means a group of programs which have joined together for the explicit purpose of operating a combined grievance resolution system.

(6) “Community placement” means a living situation which is arranged with the assistance of a case manager or service coordinator or a person or agency performing tasks similar to those performed by a case manager or service coordinator and which is either a residential setting that is directed and controlled by the individual or his or her guardian or a place licensed or certified as a residential care facility or care home for either adults or children by representatives of the state or county government pursuant to a comprehensive individualized plan of care or service.

(7) “Concern” means a complaint, disagreement or dispute which a client or a person on behalf of a client may have with a program or program staff which the client chooses to resolve through the informal resolution process pursuant to s. DHS 94.40 (4).

(8) “County department” means the county department of human services established under s. 46.23, Stats., the county department of community programs established under s. 51.42, Stats., or the county department of developmental disabilities services established under s. 51.437, Stats.

(9) “Court order” means a lawful order of a court of competent jurisdiction.

(10) “Department” means the Wisconsin department of health services.

(11) “Director” means the administrator of a treatment facility or the person directing the activities of any other service provider.

(12) “Drastic treatment procedure” means an extraordinary or last resort treatment method which places the patient at serious risk for permanent psychological or physical injury, including psychosurgery, convulsive therapy other than electroconvulsive therapy and behavior modification using painful stimuli.

(13) “Emergency” means that it is likely that the patient may physically harm himself or herself or others.

(14) “Emergency situation” means a situation in which, based on the information available at the time, there is reasonable cause to believe that a client or a group of clients is at significant risk of physical or emotional harm due to the circumstances identified in a grievance or concern.

(15) “Financial benefit” means improvement in the functioning of a facility due to patient labor.

(16) “Forensic unit” means an inpatient ward or unit where a majority of the patients are admitted or committed under ch. 971 or 975, Stats., or under s. 51.37 (5), Stats.

(17) “Grievance” means a statement by a grievant that an action or an inaction by a program or its staff has abridged rights guaranteed to the client under s. 51.61, Stats., and this chapter combined with a request that the matter be dealt with through the program’s formal grievance resolution process pursuant to s. DHS 94.40 (5).

(18) “Grievance examiner” means a staff person of the department designated by the secretary to conduct first administrative level reviews of grievances appealed from programs operating independently from a county department and second administrative level reviews of grievances filed regarding programs operated by or under contract with a county department.

(19) “Grievance resolution system” means the procedures established by a program or coalition of programs for formally responding to a grievance.

(20) “Grievant” means a client who has lodged a grievance or a person who has lodged a grievance on behalf of a client pursuant to s. DHS 94.49.

(21) “Hospital” has the meaning prescribed in s. 50.33 (2), Stats.

(22) “Informed consent” or “consent” means written consent voluntarily signed by a patient who is competent and who understands the terms of the consent, or by the patient’s legal guardian or the parent of a minor, as permitted under s. 51.61 (6) and (8), Stats., without any form of coercion, or temporary oral consent obtained by telephone in accordance with s. DHS 94.03 (2m).

(23) “Inpatient” means a person who is receiving treatment, care, services or supports while residing in an inpatient treatment facility, a residential treatment facility or in any facility or home which is subject to regulation as a place of residence and service provision for patients by the department, a county department or a county department of social services established under s. 46.215 or 46.22, Stats.

(24) “Inpatient treatment facility” has the meaning prescribed for “inpatient facility” in s. 51.01 (10), Stats., and includes the mental health institutes as defined in s. 51.01 (12), Stats., the Milwaukee county mental health center established under s. 51.08, Stats., and county hospitals established under s. 51.09, Stats.

(25) “Institutional review board” means a board established under 45 CFR 46.

(26) “Isolation” means any process by which a person is physically or socially set apart by staff from others but does not include separation for the purpose of controlling contagious disease.

(27) “Least restrictive treatment” means treatment and services which will best meet the patient’s treatment and security

needs and which least limit the patient’s freedom of choice and mobility.

(28) “Mechanical support” means an apparatus that is used to properly align a patient’s body or to help a patient maintain his or her balance.

(29) “Medical restraint” means an apparatus or procedure that restricts the free movement of a patient during a medical or surgical procedure or prior to or subsequent to such a procedure to prevent further harm to the patient or to aid in the patient’s recovery, or to protect a patient during the time a medical condition exists.

(30) “Outpatient” means a person receiving treatment, care, services or supports from any service provider if the person receiving the services does not reside in a facility or home owned, operated or managed by the service provider.

(31) “Outpatient treatment facility” means a service provider providing services for patients who do not reside in a facility or home owned, operated or managed by the service provider.

(32) “Patient” has the meaning prescribed in s. 51.61 (1) (intro.), Stats.

(33) “Personal search” means a search of the patient’s person, including the patient’s pockets, frisking his or her body, an examination of the patient’s shoes and hat and a visual inspection of the patient’s mouth.

(34) “Physical restraint” means any physical hold or apparatus, excluding a medical restraint or mechanical support, that interferes with the free movement of a person’s limbs and body.

(35) “Program,” as used in subch. III, means any public or private organization or agency, other than Mendota and Winnebago mental health institutes, the state centers for persons with developmental disabilities and the Wisconsin resource center, which provides services or residential care for a client for mental illness, a developmental disability, alcoholism or drug dependency.

(36) “Program director” means the person appointed to administer the county department’s programs.

(37) “Program manager,” as used in subch. III, refers to the individual in charge of the operation of a program who has the specific authority to approve and implement decisions made through the grievance resolution process.

(38) “Research” means a systematic investigation designed to develop or contribute to generalizable knowledge, except that it does not include an investigation involving only treatment records or routine follow-up questionnaires.

(39) “Residential treatment facility” means a treatment facility or home that provides a 24-hour residential living program and services for inpatients, which is subject to regulation as a place of residence and services for patients by the department or any county department or a county department of social services under s. 46.215 or 46.22, Stats., including a center for the developmentally disabled as defined in s. 51.01 (3), Stats.

(40) “Seclusion” means that form of isolation in which a person is physically set apart by staff from others through the use of locked doors.

(41) “Secretary” means the head of the department.

(42) “Service provider” means an agency, facility or individual providing treatment, care, services or supports to clients.

(43) “Strip search” means a search in which the patient is required to remove all of his or her clothing. Permissible inspection includes examination of the patient’s clothing and body and visual inspection of his or her body cavities.

(44) “Treatment” has the meaning prescribed in s. 51.01 (17), Stats.

(45) “Treatment facility” means any publicly or privately operated facility, unit in a facility or agency providing treatment, habilitation or rehabilitation for alcoholic, drug dependent, mentally ill or developmentally disabled persons, including an inpa-

tient treatment facility, a residential treatment facility or an outpatient treatment facility.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87; r. and recr. Register, June, 1996, No. 486, eff. 7-1-96; correction in (8) made under s. 13.93 (2m) (b) 7., Stats., Register January 2002 No. 553; **correction in (10) made under s. 13.92 (4) (b) 6., Stats., Register November 2008 No. 635.**

DHS 94.03 Informed consent. (1) Any informed consent document required under this chapter shall declare that the patient or the person acting on the patient's behalf has been provided with specific, complete and accurate information and time to study the information or to seek additional information concerning the proposed treatment or services made necessary by and directly related to the person's mental illness, developmental disability, alcoholism or drug dependency, including:

- (a) The benefits of the proposed treatment and services;
- (b) The way the treatment is to be administered and the services are to be provided;
- (c) The expected treatment side effects or risks of side effects which are a reasonable possibility, including side effects or risks of side effects from medications;
- (d) Alternative treatment modes and services;
- (e) The probable consequences of not receiving the proposed treatment and services;
- (f) The time period for which the informed consent is effective, which shall be no longer than 15 months from the time the consent is given; and
- (g) The right to withdraw informed consent at any time, in writing.

(2) An informed consent document is not valid unless the subject patient who has signed it is competent, that is, is substantially able to understand all significant information which has been explained in easily understandable language, or the consent form has been signed by the legal guardian of an incompetent patient or the parent of a minor, except that the patient's informed consent is always required for the patient's participation in experimental research, subjection to drastic treatment procedures or receipt of electroconvulsive therapy.

(2m) In emergency situations or where time and distance requirements preclude obtaining written consent before beginning treatment and a determination is made that harm will come to the patient if treatment is not initiated before written consent is obtained, informed consent for treatment may be temporarily obtained by telephone from the parent of a minor patient or the guardian of a patient. Oral consent shall be documented in the patient's record, along with details of the information verbally explained to the parent or guardian about the proposed treatment. Verbal consent shall be valid for a period of 10 days, during which time informed consent shall be obtained in writing.

(3) The patient, or the person acting on the patient's behalf, shall be given a copy of the completed informed consent form, upon request.

(4) When informed consent is refused or withdrawn, no retaliation may be threatened or carried out.

Note: Additional requirements relating to refusal to participate in prescribed treatment are addressed under s. DHS 94.09.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87; am. (1) (intro.), (a), (b), (d), (e), (f), cr. (2m), Register, June, 1996, No. 486, eff. 7-1-96.

DHS 94.04 Notification of rights. (1) Before or upon admission or, in the case of an outpatient, before treatment is begun, the patient shall be notified orally and given a written copy of his or her rights in accordance with s. 51.61 (1) (a), Stats., and this chapter. Oral notification may be accomplished by showing the patient a video about patient rights under s. 51.61, Stats., and this chapter. The guardian of a patient who is incompetent and the parent of a minor patient shall also be notified, if they are available. Notification is not required before admission or treatment when there is an emergency.

Note: The statute does not make distinctions among types of treatment facilities when it comes to protecting patients' rights. Some rights may be more applicable to patients in inpatient facilities than to patients in less restrictive facilities such as sheltered workshops or outpatient clinics. When informing patients of their rights, facility directors may emphasize those rights that are most applicable to the particular facility, program or services but s. 51.61, Stats., requires notification that other rights exist and may, under some circumstances, apply in a given situation.

(2) Before, upon or at a reasonable time after admission, a patient shall be informed in writing, as required by s. 51.61 (1) (w), Stats., of any liability that the patient or any of the patient's relatives may have for the cost of the patient's care and treatment and of the right to receive information about charges for care and treatment services.

(3) Patients who receive services for an extended period of time shall be orally re-notified of their rights at least annually and be given another copy of their rights in writing if they request a copy or if there has been a statutory change in any of their rights since the time of their admission.

(4) If a patient is unable to understand the notification of rights, written and oral notification shall be made to the parent or guardian, if available, at the time of the patient's admission or, in the case of an outpatient, before treatment is begun, and to the patient when the patient is able to understand.

(5) All notification of rights, both oral and written, shall be in language understood by the patient, including sign language, foreign language or simplified language when that is necessary. A simplified, printed version of patients rights shall be conspicuously posted in each patient area.

Note: A simplified version of patient rights in poster form is available from the Division of Disability and Elder Services, P.O. Box 7851, Madison, WI 53707.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87; am. (1), renum. (2), (3) to be (4), (5), cr. (2), (3), Register, June, 1996, No. 486, eff. 7-1-96.

Subchapter II — Patient Rights

DHS 94.05 Limitation or denial of rights. (1) No patient right may be denied except as provided under s. 51.61 (2), Stats., and as otherwise specified in this chapter.

(2) (a) Good cause for denial or limitation of a right exists only when the director or designee of the treatment facility has reason to believe the exercise of the right would create a security problem, adversely affect the patient's treatment or seriously interfere with the rights or safety of others.

(b) Denial of a right may only be made when there are documented reasons to believe there is not a less restrictive way of protecting the threatened security, treatment or management interests.

(c) No right may be denied when a limitation can accomplish the stated purpose and no limitation may be more stringent than necessary to accomplish the purpose.

(3) At the time of the denial or limitation, written notice shall be provided to the patient and the guardian, if any, and a copy of that notice shall be placed in the patient's treatment record. The written notice shall:

(a) Inform the patient and the guardian, if any, of the right to an informal hearing or a meeting with the person who made the decision to limit or deny the right.

(b) State the specific conditions required for restoring or granting the right at issue;

(c) State the expected duration of denial or limitation; and

(d) State the specific reason for the denial or limitation.

(4) Within 2 calendar days following the denial, written notice shall be sent as follows:

(a) If the patient is a county department patient, to the county department's client rights specialist and, in addition, if the patient is in a department-operated facility, to the department's division of care and treatment facilities; and

(b) If the patient is not a county department patient, to the treatment facility's client rights specialist and, in addition, if the

patient is in a department-operated facility, to the department's division of care and treatment facilities.

Note: Copies of the rights-denial form may be requested from the Department's website at www.dhs.wisconsin.gov or by writing to the Division of Disability and Elder Services, P.O. Box 7851, Madison, WI 53707-7851.

(5) The treatment facility director or that person's designee shall hold an informal hearing or arrange for the person who made the decision to limit or deny the right to hold a meeting within 3 days after receiving a hearing request or a request for a meeting with the person who made the decision from a patient whose rights have been denied or limited. The treatment facility director or designee, in the case of a hearing, or the person who made the decision to limit or deny the right, in the case of a meeting, shall consider all relevant information submitted by or on behalf of the patient when rendering a decision.

(6) The service provider shall inform a patient whose rights are limited or denied in accordance with this subsection that the patient may file a grievance concerning the limitation or denial.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87; am. (3) (a), (4) (a), (5), r. and recr. (6), Register, June, 1996, No. 486, eff. 7-1-96.

DHS 94.06 Assistance in the exercise of rights.

(1) Each service provider shall assist patients in the exercise of all rights specified under ch. 51, Stats., and this chapter.

(2) No patient may be required to waive any of his or her rights under ch. 51, Stats., or this chapter as a condition of admission or receipt of treatment and services.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87; renun and am., cr. (2), Register, June, 1996, No. 486, eff. 7-1-96.

DHS 94.07 Least restrictive treatment and conditions. (1) Except in the case of a patient who is admitted or transferred under s. 51.35 (3) or 51.37, Stats., or under ch. 971 or 975, Stats., each patient shall be provided the least restrictive treatment and conditions which allow the maximum amount of personal and physical freedom in accordance with s. 51.61 (1) (e), Stats., and this section.

(2) No patient may be transferred to a setting which increases personal or physical restrictions unless the transfer is justified by documented treatment or security reasons or by a court order.

Note: Refer to ss. 51.35 (1) and 55.15, Stats., for transfer requirements in cases that are different from those covered under s. 51.61 (1) (e), Stats.

(3) Inpatient and residential treatment facilities shall identify all patients ready for placement in less restrictive settings and shall, for each of these patients, notify the county department or the county social services department of the identified county of responsibility, as determined in accordance with s. 51.40, Stats., and shall also notify the patient's guardian and guardian ad litem, if any, and the court with jurisdiction over the patient's ch. 51 or 55, Stats., placement, if any, that the patient is ready for placement in a less restrictive setting. The county department or the county social services department shall then act in accordance with s. 51.61 (1) (e), Stats., to place the patient in a less restrictive setting.

(4) Inpatient and residential treatment facilities shall identify security measures in their policies and procedures and shall specify criteria for the use of each security-related procedure.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87; am. (1), (3), renun. (5) to be HFS 94.24 (3) (i), Register, June, 1996, No. 486, eff. 7-1-96.

DHS 94.08 Prompt and adequate treatment. All patients shall be provided prompt and adequate treatment, habilitation or rehabilitation, supports, community services and educational services as required under s. 51.61 (1) (f), Stats., and copies of applicable licensing and certification rules and program manuals and guidelines.

Note: Educational requirements for school-age patients in inpatient facilities can be found under chs. 115 and 118, Stats.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87; am. Register, June, 1996, No. 486, eff. 7-1-96.

DHS 94.09 Medications and other treatment.

(1) Each patient shall be informed of his or her treatment and care

and shall be permitted and encouraged to participate in the planning of his or her treatment and care.

(2) A patient may refuse medications and any other treatment except as provided under s. 51.61 (1) (g) and (h), Stats., and this section.

(3) Any patient who does not agree with all or any part of his or her treatment plan shall be permitted a second consultation for review of the treatment plan as follows:

(a) An involuntary patient may request a second consultation from another staff member who is not directly providing treatment to the patient, and the treatment facility shall make the designated staff member available at no charge to the patient; and

(b) Any patient may, at his or her own expense, arrange for a second consultation from a person who is not employed by the treatment facility to review the patient's treatment record.

(c) Service providers may pay for some or all of the costs of any second consultation allowed under par. (b). Service providers may also enter into agreements with other service providers to furnish consultations for each other's clients.

(4) Except in an emergency when it is necessary to prevent serious physical harm to self or others, no medication may be given to any patient or treatment performed on any patient without the prior informed consent of the patient, unless the patient has been found not competent to refuse medication and treatment under s. 51.61 (1) (g), Stats., and the court orders medication or treatment. In the case of a patient found incompetent under ch. 54, Stats., the informed consent of the guardian is required. In the case of a minor, the informed consent of the parent or guardian is required. Except as provided under an order issued under s. 51.14 (3) (h) or (4) (g), Stats., if a minor is 14 years of age or older, the informed consent of the minor and the minor's parent or guardian is required. Informed consent for treatment from a patient's parent or guardian may be temporarily obtained by telephone in accordance with s. DHS 94.03 (2m).

(5) A voluntary patient may refuse any treatment, including medications, at any time and for any reason, except in an emergency, under the following conditions:

(a) If the prescribed treatment is refused and no alternative treatment services are available within the treatment facility, it is not considered coercion if the facility indicates that the patient has a choice of either participating in the prescribed treatment or being discharged from the facility; and

(b) The treatment facility shall counsel the patient and, when possible, refer the patient to another treatment resource prior to discharge.

(6) The treatment facility shall maintain a patient treatment record for each patient which shall include:

(a) A specific statement of the diagnosis and an explicit description of the behaviors and other signs or symptoms exhibited by the patient;

(b) Documentation of the emergency when emergency treatment is provided to the patient;

(c) Clear documentation of the reasons and justifications for the initial use of medications and for any changes in the prescribed medication regimen; and

(d) Documentation that is specific and objective and that adequately explains the reasons for any conclusions or decisions made regarding the patient.

(7) A physician ordering or changing a patient's medication shall ensure that other members of the patient's treatment staff are informed about the new medication prescribed for the patient and the expected benefits and potential adverse side effects which may affect the patient's overall treatment.

(8) A physician ordering or changing a patient's medication shall routinely review the patient's prescription medication, including the beneficial or adverse effects of the medication and

the need to continue or discontinue the medication, and shall document that review in the patient's treatment record.

(9) Each inpatient and residential treatment facility that administers medications shall have a peer review committee or other medical oversight mechanism reporting to the facility's governing body to ensure proper utilization of medications.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87; renum. (1) to (8) to be (2) to (9) and am. (4); cr. (1), (3) (c), (6) (d), Register, June, 1996, No. 486, eff. 7-1-96; correction in (4) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.

DHS 94.10 Isolation, seclusion and physical restraints. Any service provider using isolation, seclusion or physical restraint shall have written policies that meet the requirements specified under s. 51.61 (1) (i), Stats., and this chapter. Isolation, seclusion or physical restraint may be used only in an emergency, when part of a treatment program or as provided in s. 51.61 (1) (i) 2., Stats. For a community placement, the use of isolation, seclusion or physical restraint shall be specifically approved by the department on a case-by-case basis and by the county department if the county department has authorized the community placement. In granting approval, a determination shall be made that use is necessary for continued community placement of the individual and that supports and safeguards necessary for the individual are in place.

Note: The use of isolation, seclusion or physical restraint may be further limited or prohibited by licensing or certification standards for that service provider.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87; r. and recr. Register, June, 1996, No. 486, eff. 7-1-96.

DHS 94.11 Electroconvulsive therapy. (1) No patient may be administered electroconvulsive therapy except as specified under s. 51.61 (1) (k), Stats., and this section.

(2) The patient shall be informed that he or she has a right to consult with legal counsel, legal guardian, if any, and independent specialists prior to giving informed consent for electroconvulsive therapy.

(3) A treatment facility shall notify the program director prior to the planned use of electroconvulsive therapy on a county department patient.

(4) Electroconvulsive therapy may only be administered under the direct supervision of a physician.

(5) A service provider performing electroconvulsive therapy shall develop and implement written policies and procedures for obtaining and monitoring informed consent.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87; cr. (5), Register, June, 1996, No. 486, eff. 7-1-96.

DHS 94.12 Drastic treatment procedures. (1) Drastic treatment procedures may only be used in an inpatient treatment facility or a center for the developmentally disabled as defined in s. 51.01 (3), Stats. No patient may be subjected to drastic treatment procedures except as specified under s. 51.61 (1) (k), Stats., and this section.

(2) The patient shall be informed that he or she has a right to consult with legal counsel, legal guardian, if any, and independent specialists prior to giving informed consent for drastic treatment procedures.

(3) The treatment facility shall notify the program director prior to the planned use of drastic treatment procedures on county department patients.

(4) Each county department shall report monthly to the department the type and number of drastic treatment procedures used on county department patients.

Note: Reports required under sub. (4) should be sent to the area administrator in the appropriate Department regional office. The addresses of all regional offices are available from the Office of Strategic Finance, P.O. Box 7850, Madison, WI 53707.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87.

DHS 94.13 Research and human rights committee.

(1) An inpatient or residential treatment facility conducting or permitting research or drastic treatment procedures involving

human subjects shall establish a research and human rights committee in accordance with 45 CFR 46, s. 51.61 (4), Stats., and this section.

(2) The committee shall include 2 members who are consumers or who represent either an agency or organization which advocates rights of patients covered by this chapter.

(3) The inpatient or residential treatment facility research and human rights committee shall designate a person to act as consent monitor who shall be authorized to validate informed consent and terminate a patient's participation in a research project or a drastic treatment procedure immediately upon violation of any requirement under this chapter or upon the patient's withdrawal of consent.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87.

DHS 94.14 Research. (1) All proposed research involving patients shall meet the requirements of s. 51.61 (1) (j), Stats., 45 CFR 46, and this section.

(2) No patient may be subjected to any experimental diagnostic or treatment technique or to any other experimental intervention unless the patient gives informed consent, the patient's informed consent is confirmed by the consent monitor and the research and human rights committee has determined that adequate provisions are made to:

(a) Protect the privacy of the patient;

(b) Protect the confidentiality of treatment records in accordance with s. 51.30, Stats., and ch. DHS 92;

(c) Ensure that no patient may be approached to participate in the research unless the patient's participation is approved by the person who is responsible for the treatment plan of the patient; and

(d) Ensure that the conditions of this section and other requirements under this chapter are met.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87; correction in (2) (b) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532; correction in (2) (b) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.

DHS 94.15 Labor performed by patients. (1) Any labor performed by a patient which is of financial benefit to the treatment facility shall be conducted within the requirements under s. 51.61 (1) (b), Stats., and this section.

(2) Patients may only be required to perform tasks that are equivalent to personal housekeeping chores performed in common or private living areas of an ordinary home. Personal housekeeping tasks may include light cleaning of shared living quarters if all patients sharing those quarters participate as equally as possible in the cleaning chores.

(3) Payment for therapeutic labor authorized under s. 51.61 (1) (b), Stats., shall be made in accordance with wage guidelines established under state and federal law.

(4) Documentation shall be made in the treatment record of any compensated, uncompensated, voluntary or involuntary labor performed by any patient.

(5) The document used to obtain informed consent for application of a patient's wages toward the cost of treatment shall conspicuously state that the patient has the right to refuse consent without suffering any adverse consequences.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87; am. (2), (3), Register, June, 1996, No. 486, eff. 7-1-96.

DHS 94.16 Religious worship. (1) All inpatients shall be allowed to exercise their right to religious worship as specified under s. 51.61 (1) (L), Stats., and this section.

(2) The director of each treatment facility serving inpatients shall seek clergy to be available to meet the religious needs of the inpatients.

(3) The director or designee shall make reasonable provision for inpatients to attend religious services either inside or outside the facility, except for documented security reasons, and shall honor any reasonable request for religious visitation by the representative of any faith or religion.

(4) Visiting clergy shall have the same access to inpatients as staff clergy except that visiting clergy may be required to work with and be accompanied by staff clergy.

(5) A patient whose disruptive behavior interferes with other patients' right to worship shall be removed from worship services.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87.

DHS 94.17 Confidentiality of records. All treatment records are confidential. A patient or guardian may inspect, copy and challenge the patient's records as authorized under s. 51.30, Stats., and ch. DHS 92.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87; correction made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532; **correction made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.**

DHS 94.18 Filming and taping. (1) No patient may be recorded, photographed, or filmed for any purpose except as allowed under s. 51.61 (1) (o), Stats., and this section.

(2) A photograph may be taken of a patient without the patient's informed consent only for the purpose of including the photograph in the patient's treatment record.

(3) The informed consent document shall specify that the subject patient may view the photograph or film or hear the recording prior to any release and that the patient may withdraw informed consent after viewing or hearing the material.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87.

DHS 94.19 Mail. (1) Each inpatient shall be allowed to send and receive sealed mail in accordance with s. 51.61 (1) (cm) 1., Stats., and this section.

(2) Any inpatient who has been determined indigent under the facility's operating policies shall, upon request, be provided with up to 2 stamped non-letterhead envelopes each week and with non-letterhead stationery and other letter-writing materials.

(3) Mail shall be delivered to inpatients promptly by the facility's normal distribution procedures.

(4) Upon request of an inpatient or his or her guardian, mail shall be opened by a facility staff member and read to him or her. The initial request shall be documented in the treatment record.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register December 2003 No. 576.

DHS 94.20 Telephone calls. (1) Inpatients shall be allowed reasonable access to a telephone to make and receive a reasonable number of telephone calls as authorized by s. 51.61 (1) (p), Stats., and this section.

(2) Patients shall be permitted to make an unlimited number of private telephone calls to legal counsel and to receive an unlimited number of private telephone calls from legal counsel.

(3) (a) Except as provided in par. (b), each inpatient shall be permitted to make a reasonable number of private, personal calls. The number and duration of the calls may be limited for legitimate management reasons, but the facility shall provide every patient the opportunity to make at least one private, personal telephone call per day.

(b) This subsection does not prohibit a facility under s. 980.065, Stats., from recording patients' personal telephone calls or monitoring the resulting recordings.

(4) Inpatients who have been determined indigent under a facility's operating policies shall be permitted to make telephone calls under sub. (2), and at least one private, personal call per day free of charge.

(5) Treatment facilities shall provide the number of regular or pay telephones necessary to meet requirements of this section, subject to restrictions imposed by local telephone companies regarding installation of pay telephones.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87; am. (1), (3), (4), Register, June, 1996, eff. 7-1-96; CR 00-151: am. (3) Register January 2002 No. 553, eff. 2-1-02.

DHS 94.21 Visitors. (1) Each inpatient shall be permitted to see visitors each day, as authorized by s. 51.61 (1) (t), Stats., and in accordance with this section.

(2) Adequate and reasonably private space shall be provided to accommodate visitors so that severe time limits need not be set on a visit.

(3) Every visitor who arrives during normal visiting hours shall be permitted to see the patient unless the patient refuses to see the visitor.

(4) The treatment facility may require prior identification of potential visitors and may search visitors but only when there are documented security reasons for screening or searching visitors.

(5) Visits may not be limited to less than one hour, except under documented special circumstances.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87.

DHS 94.22 Voting. (1) The director of each treatment facility serving inpatients shall ensure that inpatients have an opportunity to vote, unless they are otherwise restricted by law from voting, by:

(a) Surveying all patients 18 years of age or over to ascertain their interest in registering to vote, obtaining absentee ballots and casting ballots. The survey shall be conducted far enough before an election to allow sufficient time for voter registration and acquisition of absentee ballots;

(b) Making arrangements with state and local election officials to register voters and to enable interested inpatients to cast ballots at the facility; and

(c) With a patient's consent, assisting election officials in determining the patient's place of residence for voting purposes.

(2) A treatment facility director may not prohibit an inpatient from receiving campaign literature or placing political advertisements in his or her personal quarters and shall permit candidates to campaign during reasonably regulated times at designated locations on facility property.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87.

DHS 94.23 Discharge of voluntary patients.

(1) When a voluntary inpatient requests a discharge, the facility director or designee shall either release the patient or file a statement of emergency detention with the court as provided under ss. 51.10 (5), 51.13 (7) (b) and 51.15 (10), Stats., and this section.

(2) If a voluntary inpatient requests a discharge and he or she has no other living quarters or is in need of other services to make the transition to the community, the following actions shall be taken by the facility director or designee prior to discharge:

(a) Counsel the patient and, when possible, assist the patient in locating living quarters;

(b) Inform the applicable program director, if any, of the patient's need for residential and other necessary transitional services; and

(c) If no living arrangements have been made by the time of discharge, refer the patient to an appropriate service agency for emergency living arrangements.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87.

DHS 94.24 Humane psychological and physical environment. (1) **CLEAN, SAFE AND HUMANE ENVIRONMENT.** Treatment facilities shall provide patients with a clean, safe and humane environment as required under s. 51.61 (1) (m), Stats., and this section.

(2) **COMFORT, SAFETY AND RESPECT.** (a) Staff shall take reasonable steps to ensure the physical safety of all patients.

(b) Each patient shall be treated with respect and with recognition of the patient's dignity by all employees of the service provider and by all licensed, certified, registered or permitted providers of health care with whom the patient comes in contact.

(c) A treatment facility may fingerprint a patient only if the patient is unknown, has no means of identification, cannot otherwise be identified and fingerprinting is required for identification. This restriction does not apply to patients transferred to the facility under s. 51.35 (3) or 51.37, Stats., or committed under ch. 971 or 975, Stats.

(d) Only inpatients may be subjected to a body search. All body searches shall be conducted as follows:

1. A personal search of an inpatient may be conducted by any facility staff member:

- a. Before a patient leaves or enters the security enclosure of maximum security units;
- b. Before a patient is placed in seclusion;
- c. When there is documented reason to believe the patient has, on his or her person, objects or materials which threaten the safety or security of patients or other persons; or

d. If, for security reasons, the facility routinely conducts personal searches of patients committed under ch. 971 or 975, Stats., patients residing in the maximum security facility at the Mendota mental health institute or a secure mental health unit or facility under s. 980.065, Stats., and persons transferred under s. 51.35 (3) or 51.37, Stats.;

2. A strip search of an inpatient may be conducted:

- a. Only in a clean and private place;
- b. Except in an emergency, only by a person of the same sex;
- c. Only when all less intrusive search procedures are deemed inadequate; and

d. Only under circumstances specified under subd. 1. a. to c.;

3. A body cavity search of an inpatient may be conducted:

- a. Only in a clean and private place;
- b. Only by a physician and, whenever possible, by a physician of the same sex;
- c. Only when all less intrusive search procedures are deemed inadequate; and

d. Only under circumstances specified under subd. 1. a. to c.

(e) The room and personal belongings of an inpatient may be searched only when there is documented reason to believe that security rules have been violated, except that searches may be conducted in forensic units, the maximum security facility at the Mendota mental health institute or a secure mental health unit or facility under s. 980.065, Stats., in accordance with written facility policies.

(f) Each inpatient shall be assisted to achieve maximum capability in personal hygiene and self-grooming and shall have reasonable access to:

1. Toilet articles;
2. Toothbrush and dentifrice;
3. A shower or tub bath at least once every 2 days, unless medically contraindicated;
4. Services of a barber or beautician on a regular basis; and
5. Shaving equipment and facilities.

(g) Each patient shall be given an opportunity to refute any accusations prior to initiation of disciplinary action.

(h) No patient may be disciplined for a violation of a treatment facility rule unless the patient has had prior notice of the rule.

(i) 1. Each inpatient shall have unscheduled access to a working flush toilet and sink, except when the patient is in seclusion or for security reasons or when medically contraindicated.

2. Upon request of the patient, the legal guardian of an incompetent patient or the parent of a minor, staff of the same sex shall be available to assist the patient in toileting or bathing.

3. Every patient in isolation or seclusion shall be provided an opportunity for access to a toilet at least every 30 minutes.

(j) Inpatients shall be allowed to provide their own room decorations except that a facility may restrict this right for documented security or safety reasons. Facilities may adopt policies restricting the areas where patients may display sexually explicit or patently offensive room decorations and may prohibit gang-related room decorations.

(3) SOCIAL, RECREATIONAL AND LEISURE TIME ACTIVITIES. (a) Inpatients shall be provided access to current newspapers and magazines, and shall have reasonable access to radio and television upon request, except for documented security or safety reasons.

(b) An inpatient shall be allowed individual expression through music, art, reading materials and media except for any limitation that may be necessary for documented security or safety reasons.

(c) Inpatients may not be prevented from acquiring, at their own expense, printed material, a television, a radio, recordings or movies, except for documented security or safety reasons.

(d) Each inpatient shall have reasonable access to his or her own musical instruments and to art and writing supplies, along with reasonable access to appropriate space and supervision for the use of the instruments and supplies, except for documented security or safety reasons.

Note: Any denial or restriction of a patient's right to use his or her personal articles is governed by s. DHS 94.05 and s. 51.61 (2), Stats.

(e) Each inpatient shall be provided suitable opportunities for social interaction with members of both sexes, except for documented treatment, security or safety reasons.

(f) Each inpatient shall have an opportunity for reasonable and regular access to facilities for physical exercise and shall have an opportunity for access to a variety of appropriate recreational facilities away from the living unit to the extent possible, except for any limitation that may be necessary for documented individual security or safety reasons.

(g) Each inpatient shall be provided an opportunity to be out of doors at regular and frequent intervals, with supervision as necessary, except when health reasons or documented individual security reasons indicate otherwise.

(h) Patients have a right to be free from having arbitrary decisions made about them. To be non-arbitrary, a decision about a client shall be rationally based upon a legitimate treatment, management or security interest.

(i) Inpatients shall be permitted to conduct personal and business affairs in any lawful manner not otherwise limited by statute so long as these do not interfere with the patient's treatment plan, the orderly operation of the facility, security or the rights of other patients.

(4) FOOD SERVICE. (a) Each inpatient shall be provided a nutritional diet which permits a reasonable choice of appealing food served in a pleasant manner.

(b) Snacks between meals shall be accessible to inpatients on all living units, except when contraindicated for individual patients.

(c) All inpatients shall be allowed a minimum of 30 minutes per meal and additional time as feasible.

(d) Menu preparation shall take into account customary religious, cultural or strongly-held personal convictions of inpatients.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87; am. (2) (b), (j), (3) (b), (f), (g), cr. (3) (h), renum. (3) (i) from HSS 94.07 (5), Register, June, 1996, No. 486, eff. 7-1-96; emerg. am. (2) (e), eff. 8-15-98; am. (2) (d) 1. d. and (e), Register, April, 1999, No. 520, eff. 5-1-99.

DHS 94.25 Patient funds. Except as otherwise provided under s. 51.61 (1) (v), Stats., a patient shall be permitted to use the patient's own money as the patient wishes. A service provider

holding funds for a patient shall give the patient an accounting of those funds in accordance with s. 51.61 (1) (v), Stats.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

DHS 94.26 Clothing and laundry. (1) Inpatients shall be permitted to wear their own clothing as authorized under s. 51.61 (1) (q), Stats., and this section.

(2) If inpatients do not have enough of their own clothing, they shall be furnished with appropriate noninstitutional clothing of proper size as follows:

(a) There shall be sufficient clothing to allow each patient at least one change of underwear a day and 3 changes of clothing a week; and

(b) There shall be clothing which is appropriate for patients to wear out of doors and on trips or visits in all weather conditions.

(3) All inpatients shall be provided with laundry service or, if the patient can use a washer and dryer, with access to washers and dryers. Facilities shall take reasonable measures to prevent the loss of inpatients' clothing during use of laundry services.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87; renum. from HSS 94.25, Register, June, 1996, No. 486, eff. 7-1-96.

DHS 94.27 Storage space. (1) Each inpatient shall be provided sufficient and convenient space for clothing, toilet articles and other personal belongings, as required under s. 51.61 (1) (r), Stats., and this section.

(2) Individual storage space shall be conveniently accessible to the patient, shall accommodate hanging of clothes and shall be lockable or otherwise made secure if requested by the patient.

(3) Personal storage space may be searched only if there is documented reason to believe a violation of the facility's security regulations has occurred and the patient is given the opportunity to be present during the search, except in forensic units where routine searches may be conducted in accordance with written facility policies.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87; renum. from HSS 94.26, Register, June, 1996, No. 486, eff. 7-1-96.

DHS 94.28 Right to file grievances. (1) A patient or a person acting on behalf of a patient may file a grievance under s. DHS 94.29 procedures with the administrator of a facility or other service provider or with a staff member of the facility or other service provider without fear of reprisal and may communicate, subject to s. 51.61 (1) (p), Stats., with any public official or any other person without fear of reprisal.

(2) No person may intentionally retaliate or discriminate against any patient, person acting on behalf of a patient or employee for contacting or providing information to any official or to an employee of any state protection and advocacy agency, or for initiating, participating in or testifying in a grievance procedure or in any action for any remedy authorized by law.

(3) No person may deprive a patient of the ability to seek redress for alleged violations of his or her rights by unreasonably precluding the patient from using the grievance procedure established under s. DHS 94.29 or from communicating, subject to any valid telephone or visitor restriction under s. DHS 94.05, with a court, government official, grievance investigator or staff member of a protection and advocacy agency or with legal counsel.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

DHS 94.29 Grievance resolution procedures. Failure of a treatment facility to comply with any provision of rights under s. 51.61, Stats., or this chapter may be processed as a grievance under s. 51.61 (5), Stats., and subch. III of this chapter.

History: Renum. from HSS 94.27 (1) and am., Register, June, 1996, No. 486, eff. 7-1-96.

DHS 94.30 Compliance assurance. (1) Each treatment facility director and program director shall ensure that all of his or her employees who have any patient contact are aware of

the requirements of this chapter and of the criminal and civil liabilities for violation of ss. 51.30 (10), 51.61, 146.84, 813.123, 940.22 (2), 940.225, 940.285, 940.295 and 943.20 (3) (d) 6., Stats., and of the protection for reporting violations of rights to licensing agencies under s. 51.61 (10), Stats.

(2) In the event that a contracted treatment facility does not comply with an applicable requirement of this chapter, the county department shall notify the department of the specific non-compliance within 7 calendar days of its discovery.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87; renum. from HSS 94.28, Register, June, 1996, No. 486, eff. 7-1-96.

DHS 94.31 Application of other rules and regulations. In applying the requirements of this chapter, when a different state rule or federal regulation also applies to the protection of a particular right of patients, the different state rule or federal regulation shall be controlling if it does more to promote patient rights than the counterpart requirement in this chapter.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87; renum. from HSS 94.29, Register, June, 1996, No. 486, eff. 7-1-96.

Subchapter III — Standards for Grievance Resolution Procedures

DHS 94.40 System requirements. (1) GRIEVANCE RESOLUTION SYSTEM REQUIRED. All programs providing services or residential care to persons who need the services or residential care because of mental illness, a developmental disability, alcoholism or drug dependency, as those terms are defined in s. 51.01, Stats., shall have a grievance resolution system which complies with the requirements of this subchapter.

(2) WRITTEN POLICIES. A program shall have written policies which provide that:

(a) Staff of the program know and understand the rights of the clients they serve;

(b) Fair, responsive and respectful procedures are available which permit clients to obtain resolution of their grievances within the time frames provided in this subchapter;

(c) Staff and clients are instructed in both the formal procedures by which clients may seek resolution of grievances, and informal methods for resolving client concerns; and

(d) Staff who act as client rights specialists, or private individuals with whom the program contracts for this service, are trained in the procedures required by this subchapter, techniques for resolution of concerns and grievances and the applicable provisions of ch. 51, Stats., ch. DHS 92 and this chapter.

(3) CLIENT RIGHTS SPECIALIST. (a) Each program or coalition of programs shall designate one or more persons to act as client rights specialists.

(b) The client rights specialist may be an employee of the program or of one of the programs in a coalition or may be a person under contract to a program or to a coalition of programs.

(c) The client rights specialist assigned to conduct a program level review under s. DHS 94.41 shall not have any involvement in the conditions or activities forming the basis of the client's grievance, or have any other substantial interest in those matters arising from his or her relationship to the program or the client, other than employment.

(d) If at any time during the formal resolution process a grievant wishes to switch to the informal resolution process, and the other parties agree to the switch, the client rights specialist may suspend the formal resolution process and attempt to facilitate a resolution of the matter between the parties without prejudice to positions of the grievant or the program.

(e) If the client chooses to use the informal resolution process and the matter is resolved, the client rights specialist shall prepare a brief report indicating the nature of the resolution and file it with the program manager, with copies to the client, any person acting on behalf of the client pursuant to s. DHS 94.49, and the parent or

guardian of a client if that person's consent is required for treatment.

(4) INFORMAL RESOLUTION PROCESS. (a) Each program shall have available a process which offers clients and persons acting on behalf of clients the option of seeking informal resolution of their concerns.

(b) Use of the informal resolution process shall not be a prerequisite for seeking formal relief.

(c) The informal resolution process may be used pending initiation of the formal resolution process or as an adjunct during the formal resolution process.

(d) The informal resolution process shall be adapted to the particular needs and strengths of the clients being served by the program in order to assist them and any persons acting on their behalf to participate in and understand the process as much as possible.

(e) Any applicable time limits of the formal resolution process shall be suspended during the use of the informal resolution process until a grievant indicates that he or she wishes the formal resolution process to begin or until any party requests that the formal resolution process resume.

(5) FORMAL RESOLUTION PROCESS. Each program shall have a formal resolution process for program level review of grievances under s. DHS 94.41 which includes:

(a) A process for training client rights specialists and for protecting their neutrality while conducting grievance reviews by establishing conditions which allow them to be objective in their actions, such as not allowing retribution against them for unpopular decisions;

(b) Procedures for:

1. Conducting program level inquiries;
2. Preparing reports that include factual findings, determinations of merit and recommendations for resolving grievances;
3. Completing the review process within the time limits of this subchapter;
4. Maintaining impartiality in the conduct of the inquiry; and
5. Permitting both clients and staff an equal opportunity to be heard during the process;

(c) A method for informing clients and their guardians, parents and advocates about the way grievances are presented and the process by which reviews of grievances are conducted which takes into account any special limitations clients of the program may have and adapts the system to allow clients to participate in the process to the fullest extent possible;

(d) A process for responding to decisions on grievance reviews at any level that provides for rapid and accurate compliance with final determinations as well as orders for interim relief under s. DHS 94.50;

(e) A provision that, at any time, if all parties agree, the formal resolution process and any applicable time limits may be suspended to allow the parties to attempt an informal resolution of the matter under sub. (4), facilitated by the individual conducting the review at that level of the process. If time limits are suspended, they shall begin running again upon request of any party that the formal process be resumed.

(6) PROTECTIONS FOR CLIENTS AND ADVOCATES. A program shall have policies and procedures in place which provide that no sanctions will be threatened or imposed against any client who files a grievance, or any person, including an employee of the department, a county department or a service provider, who assists a client in filing a grievance.

Note: See s.51.61(5) (d) and (7m), Stats., for the civil and criminal penalties that are available to deal with anyone who threatens action or takes action against a client who files a grievance or against a person who assists a client in filing a grievance.

(7) CLIENT INSTRUCTION. As part of the notification of rights required under s. DHS 94.04, each program shall establish specific methods of instruction to help clients and their parents or

guardians, if consent by a parent or guardian is required for treatment, understand and use the grievance system.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96; correction in (2) (d) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532; **correction in (2) (d) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.**

DHS 94.41 Program level review. (1) PRESENTATION OF GRIEVANCE. (a) A program shall establish a flexible and open process through which clients and those acting on behalf of clients can present grievances.

Note: See DHS 94.49 for grievances presented on behalf of clients, including clients under guardianship.

(b) A grievance may be presented to the program manager or any staff person in writing, orally or by any alternative method through which the client or other person ordinarily communicates.

(c) Whenever possible, a program shall attempt to resolve a grievance at the time it is presented by listening to the nature of the complaint and by making adjustments in operations or conditions that respond to the individual needs of the client.

(d) If a grievance cannot be immediately resolved, the person presenting the issue shall be given the option of using the program's formal or informal resolution process.

(e) If the informal resolution process under s. DHS 94.40 (4) is chosen, any time limits in sub. (5) shall be suspended while the parties work out their differences.

(f) If the formal resolution process under s. DHS 94.40 (5) is chosen, the program shall refer the grievance to a client rights specialist who shall conduct an inquiry and file a report as provided in subs. (2) and (3).

(2) INQUIRY BY CLIENT RIGHTS SPECIALIST. (a) Upon receiving a referral, the client rights specialist shall meet with the grievant and the client, if different, and any staff member who may be named in the complaint, identify the matters at issue and explain the process for seeking formal resolution of grievances.

(b) If the grievance was presented orally or through an alternative form of communication, the client rights specialist shall assist the grievant in putting the grievance into writing for use in the ongoing process. A copy of the written grievance shall be given to the grievant and the client, and included in the report.

(c) 1. If there are facts in dispute, the client rights specialist shall conduct an inquiry into the incidents or conditions which are the focus of the grievance.

2. The program manager shall provide the client rights specialist with full access to all information needed to investigate the grievance, all relevant areas of the program facility named in the grievance and all records pertaining to the matters raised in the grievance.

3. The inquiry of the client rights specialist may include questioning staff, the client or clients on whose behalf the grievance was presented, other clients, reviewing applicable records and charts, examining equipment and materials and any other activity necessary in order to form an accurate factual basis for the resolution of the grievance.

(d) When an inquiry requires access to confidential information protected under s. 51.30, Stats., and the client rights specialist conducting the inquiry does not otherwise have access to the information under an exception found in s. 51.30 (4) (b), Stats., the client, or the guardian or parent of the client, if the guardian or parent's consent is required, may be asked to consent in writing to the release of that information to the client rights specialist and other persons involved in the grievance resolution process. The client rights specialist may proceed with the inquiry only if written consent is obtained. If consent for access is not granted, the program shall attempt to resolve the matter through the informal resolution process. The program may include in forms used for presenting written grievances a corresponding provision relating to consent for release of confidential information.

(e) The client rights specialist shall maintain the confidentiality of any information about any program client gained during the inquiry, unless specific releases for that information are granted.

(f) With the consent of the grievant, the client rights specialist may suspend the formal resolution process and attempt an informal resolution of the grievance as provided in s. DHS 94.40 (4).

(3) REPORT OF CLIENT RIGHTS SPECIALIST. (a) In this subsection:

1. "Founded" means that there has been a violation of a specific right guaranteed to the client under ch. DHS 92 or this chapter or ch. 51, Stats.

2. "Unfounded" means that the grievance is without merit or not a matter within the jurisdiction of ch. DHS 92 or this chapter or s. 51.61, Stats.

(b) When the inquiry under sub. (2) (c) is complete, the client rights specialist shall prepare a written report with a description of the relevant facts agreed upon by the parties or gathered during the inquiry, the application of the appropriate laws and rules to those facts, a determination as to whether the grievance was founded or unfounded, and the basis for the determination.

(c) If the grievance is determined to be founded, the report shall describe the specific actions or adjustments recommended by the client rights specialist for resolving the issues presented. Where appropriate, the recommendation may include a timeline for carrying out the proposed acts and adjustments.

(d) If the grievance is determined to be unfounded, but through the process of the inquiry the client rights specialist has identified issues which appear to affect the quality of services in the program or to result in significant interpersonal conflicts, the report may include informal suggestions for improving the situation.

(e) Copies of the report shall be given to the program manager, the client and the grievant, if other than the client, the parent or guardian of a client if that person's consent is required for treatment, and all relevant staff.

(f) The client rights specialist shall purge the names or other client identifying information of any client involved in the grievance, other than the client directly involved, when providing copies of the report to persons other than the staff directly involved, the program manager or other staff who have a need to know the information.

(4) PROGRAM MANAGER'S DECISION. (a) If the program manager, the client, the grievant, if other than the client, and the guardian or parent, if that person's consent is required for treatment, agree with the report of the client rights specialist, and if the report contains recommendations for resolution, those recommendations shall be put into effect within an agreed upon timeframe.

(b) If there is disagreement over the report, the client rights specialist may confer with the client, the grievant, if other than the client, the parent or guardian of the client, if that person's consent is required for treatment, and the program manager or his or her designee to establish a mutually acceptable plan for resolving the grievance.

(c) If the disagreement cannot be resolved through the discussions under par. (b), the program manager or designee shall prepare a written decision describing the matters which remain in dispute and stating the findings and determinations or recommendations which form the official position of the program.

(d) The decision may affirm, modify or reverse the findings and recommendations proposed by the client rights specialist. However, the program manager shall state the basis for any modifications which are made.

(e) The program manager's decision shall be given personally or sent by first class mail to the client and the grievant, if other than the client, the parent or guardian of a client, if that person's consent is required for treatment, and all staff who received a copy of the report of the client rights specialist. The decision shall include a notice which explains how, where and by whom a

request for administrative review of the decision under s. DHS 94.42 (2) may be filed and states the time limit for filing a request for administrative review.

(5) TIME LIMITS. (a) *Filing a grievance.* 1. A client or a person acting on the client's behalf shall present a grievance to the client rights specialist, a staff person or the program manager within 45 days of the occurrence of the event or circumstance in the grievance or of the time when the event or circumstance was actually discovered or should reasonably have been discovered, or of the client's gaining or regaining the ability to report the matter, whichever comes last.

2. The program manager may grant an extension of the 45 day time limit for filing a grievance for good cause. In this subdivision, "good cause" may include but is not limited to circumstances in which there is a reasonable likelihood that despite the delay:

a. Investigating the grievance will result in an improvement in care for or prevention of harm to the client in question or other clients in the program; or

b. Failing to investigate the grievance would result in a substantial injustice.

(b) *Processing grievances in non-emergency situations.* In situations in which there is not an emergency, the following time limits apply:

1. A staff person receiving a request for formal resolution of a grievance shall present the request to the program manager or his or her designee as soon as possible but not later than the end of the staff person's shift;

2. The program manager or his or her designee shall assign a client rights specialist to the grievance within 3 business days after the request for formal process has been made;

3. The client rights specialist shall complete his or her inquiries and submit the report under sub. (4) within 30 days from the date the grievance was presented to a program staff person; and

4. A written decision under sub. (4) (e) shall be issued within 10 days of the receipt of the report, unless the client, the grievant, if other than the client, and the parent or guardian of the client, if that person's consent is necessary for treatment, agree to extend this period of time while further attempts are made to resolve the matters still in dispute.

(c) *Processing grievances in emergency situations.* 1. In emergency situations, the following time limits apply:

a. A staff person receiving the request shall immediately present the matter to the program manager or his or her designee;

b. The program manager or designee shall assign a client rights specialist as soon as possible but no later than 24 hours after the request is received;

c. The client rights specialist shall complete the inquiry and submit the report identified in sub. (4) within 5 days from the date the grievance was presented; and

d. A written decision under sub. (4) (e) shall be issued within 5 days of the receipt of the report, unless the client, the grievant, if other than the client, and the guardian or parent of the client, if that person's consent is necessary for treatment, agree to extend this period of time while further attempts are made to resolve the matters still in dispute.

2. If after a preliminary investigation it appears that there is no emergency, the client rights specialist may treat the situation as a non-emergency for the remainder of the process.

(6) PROTECTION OF CLIENTS. If the client rights specialist determines that a client or a group of clients is at risk of harm, and the program has not yet acted to eliminate this risk, he or she shall immediately inform the program manager, the county department operating or contracting for the operation of the program, if any, and the office of the department with designated responsibility for investigating client grievances under s. DHS 94.42 (1) (b) 2. of the situation. If the situation continues to place the client or the group of clients at risk, the office designated under s. DHS 94.42 (1) (b)

2. shall take immediate action to protect the client or clients, pending further investigation.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96; corrections in (3) (a) 1. and 2. made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532; **corrections in (3) (a) 1. and 2. made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.**

DHS 94.42 Administrative review by county or state. (1) **RESPONSIBILITY FOR ADMINISTRATIVE REVIEW.** (a) 1. For a program operated by a county department or under contract with a county department, a requested administrative review of the program manager's decision under s. DHS 94.41 (4) (e) shall be conducted by the director of the county department.

2. The director of a county department may conduct administrative reviews or may designate a specific person or persons from the county department's staff to conduct administrative reviews at the county level. If a staff person is designated to carry out a review, he or she shall prepare a final report for the approval of the director.

(b) 1. For a program operating independently of a county department, including a program operated by a state agency, a requested administrative review shall be carried out by the office of the department with responsibility for investigating client grievances as provided in subd. 2.

2. The secretary shall designate a unit or office of the department to be responsible for conducting state level administrative reviews. The supervisor of the unit or office shall assign a specific staff person to act as grievance examiner for a review brought directly to the state from a program under subd. 1. or for a review brought to the state following a county level review under s. DHS 94.43. This office shall also be responsible for investigating complaints under s. DHS 94.51 relating to the existence or adequacy of grievance resolution systems.

(2) **REQUEST FOR ADMINISTRATIVE REVIEW.** (a) A request for administrative review of a program manager's decision shall state the basis for the grievant's objection and may include a proposed alternative resolution.

(b) 1. A request for administrative review may be made in writing, orally or through a person's alternative means of communication to the program manager by the grievant, the client, if other than the grievant, or the client's parent or guardian, if that person's consent is necessary for treatment.

2. If the request is made orally or through an alternative mode of communication, the program manager shall prepare a written summary of the request.

(c) When an administrative review is requested, the program manager shall transmit a copy of the original grievance, the report of the client rights specialist, the written decision and the request for review to the director of the county department or the state grievance examiner, as appropriate.

(3) **SWITCH TO INFORMAL RESOLUTION PROCESS.** At any time, if all parties agree, the formal resolution process and any applicable time limits may be suspended to allow the parties to attempt an informal resolution of the matter under s. DHS 94.40 (4), facilitated by the individual conducting the review at that level of the process. If time limits are suspended, they shall begin running again upon request of any party that the formal resolution process be resumed.

(4) **GATHERING OF INFORMATION AND PREPARATION OF REPORT.** (a) *Consideration of report and decision.* The individual conducting the administrative review shall consider the report of the client rights specialist and the decision of the program manager, but shall independently render an opinion by applying the appropriate provisions of ch. 51, Stats., ch. DHS 92 and this chapter to the facts and circumstances of the grievance.

(b) *Gathering of additional information.* 1. If the state grievance examiner or county director, or his or her designee, determines that additional information is necessary to complete the review, or if the client or person acting on behalf of the client has

made a reasonable allegation that the findings of fact by the client rights specialist or the program manager are inaccurate, further inquiry into the circumstances underlying the grievance may be made, including but not limited to personal interviews, telephone calls and inspection of equipment, facilities, records, documents and other physical or written materials which may be relevant.

2. Individuals gathering information in support of an administrative review shall have access to all relevant areas of the facility or other program named in the grievance during ordinary business hours or any other times specifically referenced in the original grievance, and shall have access to all records pertaining to the grievance.

3. If requested by the client or other grievant, the individual conducting the administrative review shall contact the client or other grievant.

4. If the circumstances underlying the grievance require an examination of clinical services, including but not limited to psychotherapeutic treatment, behavioral interventions and the administration of medication, the individual conducting the review may request that consultation on the matters in question be provided by an independent clinician with the experience and training appropriate for the inquiry.

(c) *Report.* 1. The individual conducting the review shall prepare a written report with findings of fact, conclusions based on upon the findings of fact and a determination of whether the grievance was founded or unfounded as defined in s. DHS 94.41 (3) (a).

2. If the review has been carried out by a staff person designated by the county director, the staff person shall submit a draft report to the county director who shall issue a written decision in the matter.

3. If the review has been conducted by a grievance examiner appointed under sub. (1) (b) 2., the report by the grievance examiner shall constitute the administrative decision at the state level.

4. If the grievance is determined to be founded, the decision shall identify the specific actions or adjustments to be carried out to resolve the grievance.

5. If the grievance is determined to be unfounded, the decision shall dismiss the grievance, pending any further request for review.

(5) **DISTRIBUTION OF COUNTY DIRECTOR DECISION.** (a) Copies of the decision by the county director shall be given personally or sent by first class mail to the program manager, the client, the grievant if other than the client, the client rights specialist, the parent or guardian of the client, if that person's consent is required for treatment, all staff who received a copy of the program manager's decision, and the office of the department designated under sub. (1) (b) 2.

(b) If the parties agree with the decision, any recommendations shall be put into effect as soon as possible.

(c) If there is a disagreement over the decision, the parties may confer in a meeting facilitated by the individual conducting the review in an attempt to establish a mutually acceptable plan for resolving the grievance. Any applicable time limits shall be suspended while the parties confer, but shall begin running again if either party indicates a desire to resume the formal resolution process.

(d) The county director's decision shall include a notice to the client and the program director which explains how and where a state level review of the decision can be requested under s. DHS 94.43 and the time limits within which a request for further review must be filed.

(e) Any party shall have 14 days from the date the party receives a county director's decision under par. (a) to request a state level review under s. DHS 94.43 of the county director's decision.

(6) DISTRIBUTION OF STATE GRIEVANCE EXAMINER DECISION. (a) Copies of the decision by the state grievance examiner shall be given personally or sent by first class mail to the program manager, the client, the grievant, if other than the client, the client rights specialist, the parent or guardian of a client, if that person's consent is required for treatment, and all staff who received a copy of the program manager's decision.

(b) If the program manager, the client and the person acting on behalf of the client, if any, agree with the decision, any recommendations shall be put into effect as soon as possible.

(c) If there is disagreement over the decision, the parties may confer in a meeting facilitated by the state grievance examiner in an attempt to establish a mutually acceptable plan for resolving the grievance. Any applicable time limits shall be suspended while the parties confer, but shall begin running again if either party indicates a desire to resume the formal resolution process.

(d) The decision shall include a notice to the parties which tells how and where to request final state review under s. DHS 94.44 and states the time limits within which any request for final state review must be made.

(7) TIME LIMITS. (a) *Request for review.* A grievant shall have 14 days from the date he or she received the written decision of the program manager under s. DHS 94.41 (4) (e) to request an administrative review.

(b) *Review in non-emergency situations.* 1. In situations in which there is not an emergency, the following time limits apply:

a. The program manager or his or her designee shall, upon receipt of a request for review, transmit by first class mail the materials identified in sub. (2) (c) to the county director or the office of the department designated under sub. (1) (b) 2., as appropriate, within 7 days of receiving the request; and

b. The written decision on the review shall be issued within 30 days after the request for review was presented to the program manager.

2. The county director or the state grievance examiner in non-emergency situations may extend the time limit for completing the administrative review for up to 30 additional days with the consent of the program director, the client and the grievant, if other than the client, or upon a showing that additional time is necessary to complete the inquiry or evaluation of the matters presented for review.

(c) *Review in emergency situations.* 1. In emergency situations, the following time limits apply:

a. The program manager or his or her designee shall, upon receipt of a request for review, transmit by overnight mail the materials identified in sub. (2) (c) to the county director or the office of the department designated under sub. (1) (b) 2., as appropriate, within 3 business days of receiving the request; and

b. The written decision on the review shall be issued within 10 days after the request for review was presented to the program manager.

2. If after a preliminary investigation it appears that there is no emergency, the state grievance examiner or county director may treat the situation as a non-emergency for the remainder of the process.

(8) PROTECTION OF CLIENTS. If the state grievance examiner or county director determines that a client or group of clients is at risk of harm, and the program has not yet acted to eliminate this risk, he or she shall take immediate action to protect the client or clients, pending further investigation.

(9) PROTECTION OF CLIENT CONFIDENTIALITY. The county director or state grievance examiner shall purge the names or other client identifying information of any client involved in the grievance, including the client directly involved, when providing copies of the decision to persons other than the client or a person acting on the client's behalf, the parent or guardian of the client, the

staff directly involved, or the program manager or other staff who have a need to know the information.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96; correction in (4) (a) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532; **correction in (4) (a) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.**

DHS 94.43 State level review of county administrative decision. **(1) REQUEST FOR REVIEW.** (a) For a program

operated by or under contract with a county department, if the program manager, the client or the grievant, if other than the client, disagrees with the decision of the county director under s. DHS 94.42 (5), that person may seek a review of the decision by the office or unit designated by the secretary under s. DHS 94.42 (1) (b) 2.

(b) If a grievant wishes to seek a state review of the county director's decision, he or she shall make the request to the program manager. The program manager shall forward the request and supporting materials to the office or unit designated under s. DHS 94.42 (1) (b) 2. in the same manner as provided in s. DHS 94.42 (2) (c), with a copy sent by first class mail to the county director. All other parties shall make their request to the office or unit designated under s. DHS 94.42 (1) (b) 2., with copies of the request given personally or sent by first class mail to the other parties.

(2) PROCEDURES AND TIME LIMITS. State review of a decision of a county director shall be conducted in the same manner and under the same time limits as an administrative review of a program operating independently of a county department under s. DHS 94.42.

(3) DISTRIBUTION OF DECISION. Copies of the decision by the state grievance examiner shall be given personally or sent by first class mail to the program manager, the client, the grievant, if other than the client, the county director, the client rights specialist and the client's parent or guardian if that person's consent is required for treatment.

(4) NOTICE OF RIGHT TO FINAL STATE REVIEW. The decision shall include a notice which explains how and where and under what time limits a party who disagrees with the decision of the state grievance examiner may seek final state review of the grievance under s. DHS 94.44.

(5) PROTECTION OF CLIENT CONFIDENTIALITY. The state grievance examiner shall purge the names or other client identifying information of any client involved in the grievance, including the client directly involved, when providing copies of the decision to persons other than the client, or a person acting on behalf of the client, the parent or guardian of the client, the staff directly involved, or the program manager or other staff who have a need to know the information.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

DHS 94.44 Final state review. **(1) DESIGNATION OF ADMINISTRATOR.** The secretary of the department shall designate a specific division administrator or administrators to conduct final reviews of client grievances.

(2) REQUEST FOR REVIEW. (a) A grievant seeking final state review shall present his or her request to the program manager who shall transmit the request to an administrator designated under sub. (1) along with copies of the original grievance and all prior decisions and reports.

(b) A request by a program manager or county director for final state review shall be presented to the designated administrator or administrators on forms provided by the department and include with the request copies of the original grievance and all subsequent decisions and reports. A copy of the request for review shall be sent by first class mail to all other parties, including the client and the grievant, if other than the client.

(c) A request shall describe the portion or portions of the prior decision with which the party disagrees, the basis for the disagree-

ment and any arguments or additional information the party wishes the department to consider.

(d) If the grievant is unable to prepare a written request for final state review, the program manager or his or her designee shall assist in completing the necessary forms.

Note: For copies of the form for requesting a final state review, write: Division of Care and Treatment Facilities, P.O. Box 7851, Madison WI 53707.

(3) INFORMATION FOR REVIEW. The administrator conducting the final state review may request that additional information be submitted by any party or may conduct the final review based solely on the information already received.

(4) FINAL ADMINISTRATIVE DETERMINATION. (a) The administrator shall prepare a final administrative determination for resolution of the grievance.

(b) The administrator shall affirm the prior decision unless it is contrary to state statutes or administrative rules.

(c) If the administrator determines that the prior decision should be modified or reversed, he or she shall state the basis for the modification or reversal and shall include in the final administrative determination specific instructions for carrying out any acts or adjustments being ordered to resolve the grievance and the timelines for carrying them out.

(5) DISTRIBUTION OF DECISION. (a) Copies of the decision shall be sent by first class mail to the grievance examiner, the county director, if the program was operated by or under contract with a county department, the program manager, the client, the grievant, if other than the client, the client rights specialist, the parent or guardian of a client, if that person's consent is required for treatment, and all staff who received a copy of the state grievance examiner's decision..

(b) The decision shall contain a notice to the parties that there is no further administrative appeal beyond this stage. The grievant shall be advised of the client's right to pursue additional consideration of the matter by bringing action in a court under s. 51.61 (7), Stats.

(6) TIME LIMITS. (a) *Request for review.* A party shall have 14 days from the date he or she receives the written decision by the state grievance examiner under s. DHS 94.42 (6) or 94.43 to request a final state review.

(b) *Non-emergency situations.* 1. In situations in which there is not an emergency, the following time limits apply:

a. The program manager or his or her designee shall, upon receipt of the request for review by a grievant, transmit by first class mail the materials identified in sub. (2) (a) to the administrator designated under sub. (1) within 7 days of receiving the request;

b. Other parties shall transmit by first class mail their request for review along with all of the materials directly to the department administrator within 14 days of receiving the decision of the state grievance examiner; and

c. The designated department administrator shall issue a final decision on the review within 30 days after the request for review was presented to the program manager by the grievant or a request for review by any other party was received by the designated department administrator.

2. The department administrator in non-emergency situations may extend the time limit for completing the administrative review for up to 30 additional days with the approval of the program director, the client and the grievant, if other than the client, or upon a showing that additional time is necessary to complete the inquiry or evaluation of the matters presented for review.

(c) *Emergency situations.* 1. In emergency situations, the following time limits apply:

a. The program manager or his or her designee shall, upon receipt of the request for review by a grievant, transmit by overnight mail the materials identified in sub. (2) (a) to the administrator

designated under sub. (1) within 3 business days of receiving the request.

b. Other parties shall transmit by overnight mail their request for review along with all of the materials directly to the department administrator within 7 days of receiving the decision of the state grievance examiner; and

c. The final decision on the review shall be issued within 10 days after the request for review was presented to the program manager by the grievant or a request for review by any other party was received by the department administrator.

2. If after a preliminary investigation it appears that there is no emergency, the department administrator may treat the situation as a non-emergency for the remainder of the process.

(7) PROTECTION OF CLIENTS. If the department administrator determines that a client or group of clients continues at risk of harm and the program has not yet acted to eliminate this risk, he or she shall take immediate action to protect the client or clients, pending further investigation.

(8) PROTECTION OF CLIENT CONFIDENTIALITY. The department administrator shall purge the names or other client identifying information of any client involved in the grievance, including the client directly involved, when providing copies of the decision to persons other than the client or a person acting on behalf of the client, the parent or guardian of the client, the staff directly involved, or the program manager or other staff who have a need to know the information.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

DHS 94.45 Program coalitions. (1) A group of programs may form a coalition to operate a combined grievance resolution system in order to share the costs of operating the system and to increase the independence and expertise of the individuals acting as client rights specialists.

(2) The coalition may establish a common process for conducting program level reviews and for offering informal resolution services, or may identify specific variations of the process as it applies to each coalition member, so long as each variation complies with this subchapter.

(3) The programs in the coalition may agree to share the costs of training existing staff to act as client rights specialists or may jointly contract with one or more private individuals to provide this service upon request for any member of the coalition.

(4) A coalition shall operate in accordance with a written agreement signed by the member programs. The terms of the agreement shall provide for meeting the requirements of this subchapter in the operation of the grievance resolution system and for maintaining the impartiality of the client rights specialist.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

DHS 94.46 Multiple grievances by one client.

(1) When a client or a person acting on behalf of a client has presented multiple grievances involving a variety of circumstances, the client rights specialist may establish an expanded timetable with specific priorities for investigating the allegations in a manner which appears most likely to deal with the issues in an efficient manner while addressing the most serious allegations first. This timetable may exceed the time limits in this subchapter, but shall include reasonable time limits for completing the investigation of each grievance. The client rights specialist shall notify the client or person acting on behalf of the client and the program manager of the timetable and priorities for resolution of multiple grievances within 10 days after beginning the inquiry.

(2) If there is an objection to the proposed timetable or priorities, the client rights specialist shall attempt to reach an informal resolution of the objection. If the client, person acting on behalf of the client or the program manager continues to object, that person may request a review of the issue by the county department or the state grievance examiner, whichever would normally hear

an appeal of the program level review. In the absence of a request, the timetable and priorities established by the client rights specialist shall be controlling.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

DHS 94.47 Related grievances by several clients.

(1) When 2 or more clients have presented individual grievances involving the same circumstances or a related group of circumstances relating to a single program, the client rights specialist may conduct the investigation as if it were one grievance.

(2) If the client rights specialist believes the investigation of the grievance will require more time to complete than is allowed under the time limits established in this subchapter, the client rights specialist shall establish a reasonable time limit for completing the investigation. The client rights specialist shall notify the clients, any person or persons acting on their behalf and the program manager of the time limit within 10 days after beginning the inquiry.

(3) If there is an objection to the proposed time limit for completing the investigation, the client rights specialist shall attempt to reach an informal resolution of the objection. If a client, any person acting on behalf of any of the clients or the program manager continues to object, that person may request a review of the issue by the county department or the state grievance examiner, whichever would normally hear an appeal of the program level review. In the absence of a request, the timetable established by the client rights specialist for completing the investigation shall be controlling.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

DHS 94.48 Grievances involving several programs.

(1) If a client has presented the same grievance against several programs, each of which would ordinarily use a different client rights specialist, the client rights specialists from all the programs named in the grievance may:

- (a) Jointly conduct the investigation;
- (b) Delegate the task to one or more of the client rights specialists involved; or
- (c) Refer the matter to the county department or the office of the department with jurisdiction over the services offered by the program for an immediate county or first state review.

(2) If the client rights specialist or specialists believe the investigation of the grievance will require more time to complete than is allowed under the time limits established in this subchapter, the client rights specialist or specialists shall establish a reasonable time limit for completing the investigation. The client rights specialist or specialists shall notify the client, any person acting on the client's behalf and the program manager of the time limit within 10 days after beginning the inquiry.

(3) If there is an objection to the proposed time limit for completing the investigation, the client rights specialist shall attempt to reach an informal resolution of the objection. If the client, person acting on behalf of the client or the program manager continues to object, that person may request a review of the issue by the county department or the state grievance examiner, whichever would normally hear an appeal of the program level review. In the absence of a request, the time limit established by the client rights specialist or specialists for completing the investigation shall be controlling.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

DHS 94.49 Grievances presented on behalf of clients. (1) Any person who is aware of a possible violation of a client's rights under ch. 51, Stats., ch. DHS 92 or this chapter may present a grievance on behalf of the client.

(2) When a grievance is presented on behalf of a client by someone other than the client's parent or guardian, and the parent or guardian's consent is required for treatment, the client rights specialist shall meet with the client and the client's parent or

guardian, to determine if the client or the client's parent or guardian, as appropriate, wishes the grievance investigated and resolved through the formal resolution process.

(3) If the client or, when the parent's or guardian's consent is required for treatment, the parent or guardian is opposed to using the formal resolution process, the client rights specialist may proceed with the investigation only if there are reasonable grounds to believe that failure to proceed may place the client or other clients at risk of physical or emotional harm. If there is no parent or guardian, or that person is not available, and the client is unable to express an opinion, the client rights specialist shall proceed.

(4) Where a grievance is filed on behalf of a client by a person who does not have a right to information about the client because of confidentiality statutes, the person may only receive confidential information as part of the investigation or resolution of the grievance with the informed consent of the client or his or her guardian, if there is one, the parent of a client who is under the age of 18, if the parent's consent is required for a release of information, or pursuant to an order of a court with jurisdiction over matters relating to the client under ch. 48, 51 or 55, Stats.

(5) In the absence of this consent, a person presenting a grievance on behalf of a client shall be informed of the determination of the client rights specialist and decision of the program manager, if any, regarding the merit of the grievance, but if the text of the determination contains confidential information to which the person is not privileged or for which a release has not been obtained, the text may not be disclosed to the person.

(6) (a) A person presenting a grievance on behalf of a client may request additional review of an adverse decision, up to and including final state review under s. DHS 94.44.

(b) If the client is opposed to requesting additional review, or when the parent or guardian's consent is required for treatment and the parent or guardian is opposed to requesting additional review, the reviewing officer may only proceed if the person presenting the grievance provides sufficient information to demonstrate that there are reasonable grounds for believing that failure to proceed may place the client or other clients at risk of physical or emotional harm.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.

DHS 94.50 Interim relief. (1) If the client rights specialist or a person conducting an administrative review of a grievance finds that interim relief is necessary to protect a client's well-being pending resolution of a grievance, a directive may be given to the program manager to modify the services being provided to the client to the extent necessary to protect the client.

(2) A directive for interim relief shall be designed to provide the necessary protection at the minimum expense to the program while protecting the rights of the client.

(3) A program manager may appeal a directive for interim relief to the department administrator designated under s. DHS 94.44 (1).

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

DHS 94.51 Complaints related to the existence or operation of grievance resolution systems. (1) Clients or persons acting on behalf of clients under s. DHS 94.49 may register complaints relating to failure of a program to have a grievance resolution system as required by s. 51.61 (5) (b), Stats., and this subchapter, or relating to the operation of an existing grievance resolution system directly to the unit or office of the department designated to conduct administrative reviews under s. DHS 94.42 (1) (b) 2.

(2) If a complaint regarding the existence or operation of a grievance resolution system is filed with the department, a state grievance examiner shall conduct an investigation to determine whether a grievance resolution system meeting the requirements

of s. 51.61 (5) (b), Stats., and this subchapter is in place in the program.

(3) If the program lacks a grievance resolution system, or if the operation of an existing grievance resolution system is not in substantial compliance with the requirements of this subchapter, the state grievance examiner shall issue a report identifying the steps necessary for the program to implement a grievance resolution system that complies with this subchapter, with a timeline for implementation.

(4) The client or a person acting on behalf of the client or the program manager may seek a review of the state grievance examiner's report under sub. (3) by the administrator designated under s. DHS 94.44 (1).

(5) If the program fails to implement the required steps in the expected time period, the matter shall be referred by the grievance examiner to the appropriate unit or office of the department or the county department with responsibility for oversight of the program for action related to certification, licensure or reimbursement or for censure of the program.

(6) Nothing in this section shall be read as prohibiting or limiting in any way the beginning of an action under s. 51.61 (7) or (7m), Stats., or any other civil or criminal prosecution by or on behalf of a client.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96; **correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.**

DHS 94.52 Investigation by the department. The department may investigate any alleged violation of this chapter

and shall, in accordance with ch. DHS 92, have access to treatment records and other materials and to individuals having information relating to the alleged violation.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96; correction made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532; **correction made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.**

DHS 94.53 Support for development of grievance resolution systems. (1) The department shall prepare materials, including but not limited to model policies and program guidelines, which describe methods for implementing the elements necessary for a grievance resolution system which is in compliance with this subchapter.

(2) The secretary of the department shall designate an office or unit of the department which shall be responsible for providing or contracting for the provision of technical assistance to programs with questions about the development, operation and maintenance of consistency of grievance resolution systems, and for providing or arranging for the provision of training for persons who have been designated to act as client rights specialists and county directors or staff designated to carry out administrative reviews under s. DHS 94.42.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.

DHS 94.54 Units of time. All time limits in this subchapter are expressed in calendar days unless otherwise noted.

History: Cr. Register, June, 1996, No. 486, eff. 7-1-96.